

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAMIE JARDINE,

Petitioner,

v.

Case No. 09-C-1043

LARRY JENKINS,

Respondent.

ORDER

On November 5, 2009, Jamie Jardine filed this petition pursuant to 28 U.S.C. § 2254, asserting that his state court conviction and sentence were imposed in violation of the Constitution. I dismissed the petition pursuant to Rule 4 of the Rules Governing § 2254 Proceedings. Before a habeas petitioner may take an appeal to the Seventh Circuit, I must consider whether to grant him a certificate of appealability (“COA”). 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). The certificate of appealability may issue only if the applicant makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To do so, the appellant must demonstrate that reasonable jurists could debate whether this challenge in her habeas petition should have been resolved in a different manner or that the issue presented was adequate to deserve encouragement to proceed further. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

Jardine raised a number of issues in his habeas petition. I concluded that most were obviously untimely given that he was convicted in 1994 and several years had elapsed between post-conviction filings. There were similar problems with procedural default. The bulk of his petition

involves newly discovered DNA evidence, which Jardine argues would have undermined the finding of guilt. But, as the court of appeals noted, none of this evidence was particularly relevant to the theory of the prosecution or the defense. Even so, I conclude that the import of the evidence is at least debatable, and that a COA should issue on that question. (The petition has clothed the DNA claim in a number of theories, including due process and ineffective assistance.)

Because petitioner filed a notice of appeal, I lack jurisdiction to consider the motion for reconsideration. *United States v. Burton*, 543 F.3d 950, 952 (7th Cir. 2008). Even if I had jurisdiction, however, the motion would be denied. The clerk is directed to administratively terminate the motion.

The request for a certificate of appealability is **GRANTED**, as set forth above.

SO ORDERED this 2nd day of December, 2009.

s/ William C. Griesbach
William C. Griesbach
United States District Judge